IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4670 of 2007
With
SPECIAL CIVIL APPLICATION No. 3190 of 2007
With
SPECIAL CIVIL APPLICATION No. 4672 of 2007
To
SPECIAL CIVIL APPLICATION No. 4673 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JETHIBEN SHEKHABHAI - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR JAGDISH H MEHTA for Petitioner(s) : 1,
MR SAUMIL NANAVATI, AGP for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1,
DS AFF.NOT FILED (N) for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 26/02/2007

COMMON ORAL JUDGMENT

1. Rule. Mr.Nanavati, learned AGP waives service of notice of Rule for all the respondents. With the consent of the learned Counsel for both the sides, the matter is heard finally today.

2. The short facts on which, there is no dispute, are as under:-

(a) The petitioners concerned made application to the Mamlatdar for grant of the Government land and thereafter the Mamlatdar forwarded his opinion for supporting the proposal of the petitioners concerned. The Dy. Collector directed the concerned petitioners, who applied for allotment of the land, to grant the land on payment of the amount as mentioned in the order. Similar order came to be passed by the Dy. Collector in respect of 12 to 13 agriculturists and all were granted land from the land bearing Survey No.540 at Village Sarva.

3. As per the petitioners, the respondent authority handed over the possession of the land by drawing panchnama and thereafter the District

Collector exercised the revisional power and ultimately as per the order dated 13.7.2000 passed by the District Collector the allotment made is cancelled in respect of all allottees, who were beneficiaries as per the order of the Dy. Collector. It appears that various revisions came to be preferred before the State Government by the persons concerned, who were allotted land, including the revisions preferred by the petitioners as well as the revisions preferred by one Kumbar Ranchhod Raiyabhai and Talsibhai Muljibhai being Revision Applications No.63 of 2000 and No.77 of 2000, whereas the revision of the petitioners were Nos.53 of 2000, 65 of 2000, 62 of 2000 and 57 of 2000. However, the State Government while exercising the revisional jurisdiction in the matter of revision No.63 of 2000 preferred by Kumbar Ranchhod Raiyabhai and the Revision Application No.77 of 2000 preferred by Talsi Muljibhai has partly allowed the revisions and by quashing the order of the Collector has directed for remand of the matter to the Collector for

reconsideration in light of the observations made by the State Government in the order, whereas in the aforesaid revisions preferred by the petitioners, the decisions are taken by the State Government to dismiss the revisions and the order of the Collector is confirmed. On the aforesaid aspects, there is no dispute even as per the submissions made by the learned AGP during the course of the hearing.

4. Under the above circumstances, if the State Government while exercising the revisions jurisdiction has taken two self-contradictory stands in respect to the very exercise of power by the District Collector in revisions under Section 211 of the Code, arising against the order of the Dy. Collector, whereby the land was granted to the concerned persons, including the petitioners herein, such a view taken by the State Government, when the fact situations are substantially same, can be said as ex facie error of jurisdiction.

5. The learned AGP appearing for the State authorities is not in a position to support the

contradictory stands taken by the State Government while dismissing the revision applications of the petitioners concerned as against the view taken in the other revisions, whereby the matter is remanded.

6. Under the above circumstances, the impugned order passed by the State Government for dismissing the revision application, instead of remanding the matter, deserves to be quashed. It appears that in normal course when the order of the quasi judicial authority is quashed, the matter may be required to be remanded to the very authority for reconsideration in accordance with law in light of the observations made by this Court. However, it appears that when the District Collector is seized with the matter in pursuance of the order passed by the State Government in revision applications No.63 and 77 of 2000 preferred by Kumbar Ranchhod Raiyabhai and Talsibhai Muljibhai, no useful purpose would be served in remanding the matter to the State Government for deciding the revisions afresh and, therefore, it would be just and proper to

direct the District Collector to reconsider the matter afresh in light of the observations made by the State Government in the proceedings of revision application No.63 of 2000 and No.77 of 2000.

7. In the result, the impugned order passed by the District Collector and its confirmation thereof by the State Government are quashed and set aside with the directions to the District Collector to decide the matter in might of the observations made by the State Government in revision application No.63 of 2000 and No.77 of 2000 decided on 3.11.2006 and on 4.11.2006. It is made clear that the rights and contentions of both the sides shall remain open as and when the District Collector decides the matter afresh accordingly.

8. The petitions are partly allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs. Direct service is permitted.

26.2.2007 **(Jayant Patel, J.)**

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